

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO. 16-40023-TSH
)
 ARTHUR CUMMINGS)

MOTION TO SUPPRESS EVIDENCE

Defendant, Arthur Cummings, respectfully moves the Court pursuant to Fed. R. Crim. P. 12(b)(3)(c) for an order suppressing all evidence obtained by the government on or about February 21, 2015. The evidence, consisting of electronic data along with his “internet protocol” (IP) address, was seized by the Government with a “Network Investigative Technique” (NIT), a type of malware that was secretly inserted by FBI agents located in Virginia onto Cummings’s computer in Athol, Massachusetts. Cummings also seeks suppression of any and all fruits of this illegal search. As grounds for this Motion, defendant states the following:

- (1) the remote search of Cummings’s home computer was executed pursuant to a warrant unsupported by probable cause;
- (2) the FBI intentionally or recklessly misled the issuing court about facts salient to probable cause;
- (3) the vast authority granted to the executing agents by the NIT warrant that was bereft of particularity effectively created what can be characterized as the Internet age equivalent of a general warrant;
- (4) the NIT warrant was an anticipatory warrant where the “triggering event” that would establish probable cause for searches did not occur and therefore the warrant should not have been executed; and

(5) the Magistrate Judge in the Eastern District of Virginia had no jurisdiction to issue the NIT warrant and consequently the warrant was void.

As further grounds for this Motion, defendant hereby incorporates defendant's Memorandum in Support of Motion to Suppress filed this day.

CONCLUSION

For the foregoing reasons, all evidence seized during and flowing from the illegal search must be suppressed. See Wong Sun v. United States, 371 U.S. 471 (1963).

ARTHUR CUMMINGS
By his attorney,

/s/ Timothy G. Watkins
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CERTIFICATE OF SERVICE

I, Timothy G. Watkins, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on November 14, 2016.

/s/ Timothy G. Watkins
Timothy G. Watkins